

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PIPER JAFFRAY & CO., formerly
known as U.S. BANCORP PIPER
JAFFRAY, INC.,

vs.

Plaintiff,

MARKETING GROUP, USA, INC.;
ALL PERSONS UNKNOWN
CLAIMING ANY LEGAL OR
EQUITABLE RIGHT, TITLE,
ESTATE, LIEN OR INTEREST IN
THE REAL PROPERTY
DESCRIBED IN THIS COMPLAINT
ADVERSE TO PLAINTIFF'S
INTEREST OR ANY CLOUD ON
PLAINTIFF'S INTEREST; DEAN
MILLER; LEE SAMANGO;
MICHAEL SHAMSHOUM; and
FORWARDSTEP CONSULTING,
INC.,

Defendants.

AND RELATED
COUNTERCLAIMS.

CASE NO. 06-CV-2478-H
(POR)

ORDER DENYING
PLAINTIFF'S REQUEST TO
CERTIFY SUMMARY
JUDGMENT ORDER

On July 12, 2007, the Court filed an order denying with prejudice in part and without prejudice in part plaintiff Piper Jaffray & Co.'s ("Plaintiff") motion for

1 summary judgment. (Doc. No. 96.) On July 23, 2007, Plaintiff filed an ex parte
 2 motion to amend the Court's order to include a certification for immediate appeal.
 3 (Doc. No. 98.) On July 24, the Court ordered defendants Marketing Group, USA, Inc.,
 4 Lee Samango, Michael Shamshoum, and/or ForwardStep Consulting, Inc.
 5 ("ForwardStep) (collectively "Defendants") to file any opposition to Plaintiff's motion
 6 on or before August 8, 2007. On August 8, 2007, defendants Lee Samango and
 7 ForwardStep filed an opposition, which was joined by Michael Shamshoum. (Doc.
 8 Nos. 99-100.)

9 The denial of a motion for summary judgment is generally an interlocutory order
 10 from which no appeal is available until the entry of judgment following the trial on the
 11 merits. See Hopkins v. City of Sierra Vista, Ariz., 931 F.2d 524, 529 (9th Cir. 1991).
 12 An order denying a motion for summary judgment may be reviewed by permissive
 13 interlocutory appeal, however, if a district court certifies that the order (1) involves a
 14 controlling question of law, (2) as to which there is substantial ground for difference
 15 of opinion, and (3) an immediate appeal may materially advance ultimate termination
 16 of the litigation. See 28 U.S.C. § 1292(b). The Ninth Circuit has stated that section
 17 1292(b) is to be applied sparingly and only in exceptional cases, and that the
 18 "controlling question of law" requirement be interpreted in such a way to implement
 19 this policy. See In re Cement Antitrust Litigation, 673 F.2d 1020, 1027 (9th Cir. 1982).

20 Plaintiff requests the Court certify two issues, whether Samango and
 21 ForwardStep are precluded from asserting and seeking discovery based upon an
 22 unclean hands defense, and whether an issue of fact exists regarding Miller's complete
 23 equitable ownership of the property located at 12650 Carmel Country Road, Unit 11,
 24 San Diego, California given Shamshoum's answer to the complaint and his prior
 25 declarations. The Court concludes that these are not controlling issues, but rather
 26 collateral issues, especially since the Court denied Plaintiff's motion for summary
 27 judgment on the issue of Samango and Forward Step's unclean hands defense without
 28 prejudice regarding Plaintiff's ability to refile a similar motion after Samango has more

1 time for discovery. Cf. United States v. Woodbury, 263 F.2d 784, (9th Cir. 1959)
2 (concluding that district court's decision permitting discovery after denying claim of
3 privilege is not a controlling question of law permitting an interlocutory appeal
4 pursuant to § 1292(b)). Furthermore, the Court concludes that the determination of
5 these issues would not materially advance the ultimate termination of the litigation
6 since other issues would have to be determined in order to resolve Plaintiff's claims.
7 Accordingly, the Court denies Plaintiff's motion to amend the Court's summary
8 judgment order to include a certification for immediate appeal.

9 IT IS SO ORDERED.

10 DATED: August 9, 2007

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12 MARILYN L. HUFF, District Judge
13 UNITED STATES DISTRICT COURT

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20 COPIES TO:
21 All parties of record.
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